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No. 09-121

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Gene Hoy,
Petitioner

v.

MENTOR TOWNSHIP
Respondent.

On Petition For Writ Of Certiorari
To The MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Gene Hoy
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In Propria Persona
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QUESTIONS PRESENTED FOR REVIEW

1. Did the Order to connect to the Big Creek-Mentor Sewer Authority arising from Michigan's Public Act 368 of 1978 completed by Mentor Township's Ordinance and Local Government officials' actions together with other Michigan Statutes comport with Federal requirements of Due Process of Law?

2. Does the Michigan Public Act 368 of 1978 and the resulting ordinances and regulations constitute an improper delegation of legislative authority contrary to our fundamental laws?

Parties To The Proceeding

Gene Hoy,
Petitioner in propria persona
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Mentor Township,
An unchartered Michigan Municipal
Corporation,
Respondent

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Some facts to show the background for this petition and to show the results of state officials making use of unconstitutional statutes, court rules, and ordinances.

The identification of some of the statutes, court rules, ordinances, and actions by local officials in this case that violate constitutional requirements.

TABLE OF AUTHORITIES

American Axle v Hamtramck, 461 Mich 352 (2000
Board of Education v Barnette, 319 U.S. 624 (1942)
Bolt v City of Lansing, 461 Mich 352, (2000)
Centerline v Chmelko, 164 Mich App 251 (1987)
Cleveland Board of Education v LaFleur, 414 U.S. 632 (1973)
Dearborn v Dail, 334 Mich 673, 55 NW 2d 201 (1952)
Delta County v Gladstone, 305 Mich 50, 8 NW 2c 908 (1943)
District of Columbia v Brooke, 214 U.S. 138 (1908)
Dolan v City of Tigard, 512 U.S. 374 (1994)
Duverney v Big Creek-Mentor Sewer, 468 Mich 1042 (2004)
Eyde Brothers Development Co. v Eaton Co. Drain Com'r., 427 Mich 271, 398 NW 2d 297 (1986)

Fennel v Common Council of Bay City, 36 Mich 186 (1877)
Hutchinson v Valdosta, 227 U.S. 303 (1912)
Liteky v United States, 510 U.S. 540 (1984)
Lockwood v Commissioner of Int. Revenue, 357 Mich 517 (1959)
Lucas v S. Carolina Coastal Council, 505 U.S. 1003 (1992)
Marshall v Jerrico, Inc., 446 U.S. 238 (1980)
Miranda v Arizona, 384 U.S. 436 (1966)
Panama Refining v Ryan 293 U.S. 388 (1934)
Sailors v Board of Education, 387 U.S. 105 (1966)
Sitz v State Police, 193 Mich App 690 (1992)
Smith v Goguen, 415 U.S. 566 (1973)
Taylor v Gate Pharm., 468 Mich 1, 658 NW.2d 127 (2003)
Tumey v Ohio, 273 U.S. 510 (1927)
Vlandis v Kline, 412 U.S. 441 (1972)
Wayne County v Hathcock, 471 Mich 445 (2004)

Federalist Papers, 9, 47, 51, 78
Federal Constitution
Michigan Constitution 1963

Michigan Public Health Code – P.A. 368 of 1978
Michigan P.A. 94 of 1933 – MCL 141.133
Michigan Judicature Act – MCL 600.- .181, .555, .591, .2529, .5756, .8104, .8371, .8381, .8420
MCL 49.159

18 USC 666
42 USC 1441 et seq.

BASIS FOR JURISDICTION OF THIS COURT

The last court order was from the Michigan Supreme Court dated January 27, 2009.
Rule 11 is not applicable

There have been no orders as of yet from this court.
Rule 12.5 is not applicable.

Jurisdiction is granted this court by the federal questions raised herein as to due process of law, our form of government, and federal statutes including 42 USC 1441 and some others relating to federal grants and loans. The information might relate to 18 USC 666 and others but is not argued here. I believe the information herein shows that federal rules, statutes, and rights have been ignored at all levels of the Michigan court system and that it deserves a better comment than it has received so far. (The circuit court judge labeled constitutional objections "frivolous.")

Some parts of the Federal Constitution include: Preamble; Article I, sec. 10; Article III, sec. 2; Article IV, Sec. 4; Article VI; and Amendments I, IV, V, IX, and XIV.

Summary

This action (to force government services on us and labeling them "privileges") started in the circuit court for the County of Oscoda, Michigan where "summary disposition" was granted. There was no opportunity for a jury trial. I brought a motion to set aside the judgment but it was denied. The court thinks constitutional objections are "frivolous" and awarded costs to the township's private attorney. An appeal was made to the Court of Appeals. It was denied stating "no merit." An application was made for leave to appeal in Michigan's Supreme Court. This was denied because they didn't think the issues should be reviewed by the court. They also denied a motion to uphold Michigan's Freedom of Information Act. I did a motion to reconsider – that it was their job to uphold the constitution, make the system fair, and gave solid arguments why some statutes had been improperly passed but their response on January 27, 2009 was "...it does not appear that the order was entered erroneously." I assume they meant their first denial. The county has now given the townships the money they demanded and will auction citizen's property when they can't pay.

IS THIS DUE PROCESS OF LAW?

On several occasions this court has recognized the unfairness of a government act that condemns something by an irrebuttable presumption so as to evade due process requirements of proving their case. Since justice is supposed to have the appearance of fairness according to Liteky v. United States, 510 U.S. 540 (1994) and others, this petition will describe some of the unfair machinations of the STATE OF MICHIGAN and its creatures and will point out some of their unconstitutional statutes that make it possible under color of law. To make an irrebuttable presumption into proof doesn't merely change the "game" from innocent until proven guilty, or even guilty until proven innocent, but makes us guilty no matter what thereby converting public servants into sovereign tyrants. The passing of "immunity" statutes completes the picture so there is no redress. Since this petition attacks state statutes, it affects a large number of people but, if someone reviews other states in the union, expect to find equivalent statutes there too so this is both a local and a national problem. Further, federal funds were misused in accomplishing some of the facts complained of here. In a republic/government of laws with representation, there aren't supposed to be "sacred cows" superior to law. Does this describe one?

Back in the 1970's a sewer system for Mio, Michigan had been proposed, but was voted down once or twice – overwhelmingly in 1977. In 1978 the Michigan Legislature passed Act 368 which contains irrebuttable conclusive presumptions and improperly delegates legislative authority to several of its creatures contrary to our fundamental laws. Since there was no need for the sewer, local officials tried secrecy, special meetings, and fraud. A letter written by Doug Getty (then chief sanitarian of the "health" department) to a friend in NEMCOG started it. Since a sewer **can only deal with nitrate contamination** and since there wasn't any, the letter had to get creative. There had been a bad pipe in the well (rusted through) of a restaurant which allowed surface water into the well providing a colorable claim of "nitrate contamination documented in..." This was colorable since the new pipe fixed it. It was true that there was contamination in a small portion of the downtown business section (chemicals) but a sewer could not remedy that. Then, the state provided deeper wells and forced some people to use that and destroyed their private wells. Most of what is now in the sewer district has no contamination and the nitrate contamination claim was fraud.

Undaunted, the local officials had "special meetings," one of which was at a Holiday Inn 30 miles away from the target. The general public didn't show. Apparently the efforts behind the scenes paid off because a USDA form from 1992 showed "points" given to help

decide whether to proceed. Points were given for low income, a rural area, etc., but **no points were given for need** showing fraud and complicity early on. In April, 1993 both township supervisors wrote an "Office of Federal Grants" claiming "critical needs" that never existed and other lies. Apparently no one checked these claims – or simply didn't care. From the machinations by local officials, HUD grants (CDBG) were obtained. The local officials had to contract to forgo charging "low or moderate income residents for the connections but were allowed to charge moderate income residents if they certified that there wasn't sufficient grant money available. The certification cannot be obtained, but that it was done can be shown by statements from one township supervisor and the fact that there were no figures describing "moderate income." Problems with this include the fact that dividing the 809,500 dollars (total CDBG monies given both townships for paid connections) by the original connection fee shows that more connection fees were pre-paid than they have. No CDBG funds were returned per a township supervisor's response to an FOIA request. Yet, several low-interest loans (proving low-income) are in effect that shouldn't exist. A complaint by a concerned citizen resulted in an inquiry. One township supervisor investigated (himself) with the result that 4 residents got their money back. HUD did not come in to check and will do no more. Neither will the Office of Inspector General.

Apparently there is no "oversight, even when proof is offered. One conclusion we can draw from this is that the sewer venture has turned a profit, but it also raises the question of what your petitioner is being forced to pay for with the additions to the property tax bills – but this is getting ahead of the story.

While the game was in play, we, the general public were assured that there would never be any mandatory connections, that our neighbors wanted and needed it, and that it wouldn't cost anything because of the grants. To prove people wanted it, a small survey was made that showed most did want it. A couple of people checked the results only to find they were listed as being for it when they weren't. One had never been contacted.

Lawsuits to try to stop the thing all failed. The Duverney Case, 469 Mich. 1042, (2004) stalled in the Michigan Supreme Court when they refused to hear it (although 4 justices would have) and the cost was very high. In 1994 the game was well underway although the majority of the public was unaware. It entered a critical phase. On Jan. 18, **1994**, in the sports section of a local paper, local officials ran a Notice of Intent for Revenue Bonds. Ten % of the authority district must sign petition for referendum. Jan. 25, 1994, only those registered in the proposed sewer district could sign a petition. March 15, 1994 – no vote requested. "The only thing standing between us now is if the cost comes in higher than we have money for." (Skip Bohlinger.) On Feb 6, 1995, there was a meeting with

handouts and presentations and more promises of no mandatory connections. This was the first time the public got to see a map showing **proposed** sewer system as of Feb. 6, 1995. On May 9, **1995**, the **design was complete** and the officials were waiting on permits. Note that if they publish the "required" notice per Act 94 of 1933 on Jan. 18, 1994 but the "electors" who will be affected won't even know who they are until May 9 of the **next year**, that's not very sporting since the act "requires" 10% or 15,000 of the electors to petition for a vote within **45 days**. By not setting the "district," all of both townships would have had to petition (and be psychic). It isn't due process either. Another problem is that this P.A. 94 of 1933 (being MCL 141.133) conflicts with Michigan's Const. 63, Art. 4, Sec. 29 where "The legislature shall pass no local or special act in any case where a general act can be made applicable, and where a general act can be made applicable shall be a judicial question." Sec. 29 goes on to require votes for local acts. It is obvious to this citizen that any statute which requires an ordinance to complete it, as was done here, is necessarily a local act because each applies to a small targeted area, each is unique, and this one goes beyond what is authorized or can be authorized. Petitioner notes that MCL 141.133 has been used (unfairly) as a weapon and that it conflicts with Michigan's constitution of 1963; the basic reason for government in this country ("That to secure these rights, Governments are instituted

among Men, deriving their just Powers from the Consent of the Governed." (Declaration)); and the "guarantee to every State in this Union a republican form of government..." (representation and rule of law). To issue such a notice without full disclosure, instead using fraud to deceive the public into inaction can't be considered due process, but, then, neither can a court system that condones it. Note that it didn't include representation either. Those on both township and sewer boards are allegedly representing the township corporation, the sewer corporation, themselves, the citizens of the township, and the citizens in the sewer district. If no one is supposed to be able to serve two masters, how about several? The last one listed here had no representation.

The sewer system was installed, then it was announced that people would be forced to connect. Some, including Petitioner looked for what the statute labeled "innovative and alternative" systems, but the local health department did everything possible to discourage that with unreasonable requirements and multiple fees. Some locals had to go to court to install them. They only allowed one – the most expensive commercial one – and they made sure the sewer seemed cheaper. Petitioner couldn't accept the unreasonable terms of the alternative requiring liens on properties, the signing of a "Hold Harmless Statement" so the "Health" Department couldn't be sued. This choice was also unconscionable. The District Health

Dept. required certification by third parties for the alternatives thereby failing to provide any real help (consideration), only fees and regulations they made up. The proof the public didn't want or need the sewer is the large percentage of people sued to force connections. To agree with or condone this action is to deny a government of, by and for the people. If you don't believe that the general public can or will act in their best interests, you shouldn't be in public office – at least not in this country.

We learned later that the expensive alternative system had been approved back in 1993 which should have made court action unnecessary to use it. The alternative was chosen by some out of fear of the monthly rates. These alternatives were not "innovative" and the cost was out of reach for the low income citizens. I think I could make an equivalent to the approved one for about 200 dollars (instead of thousands) but it isn't needed and wouldn't be approved. The legislature's P.A. 368 of 1978 "enables" local officials to bill any amount they please (no firewall) for their enforced sewer monopoly, but the same act also "enables" the health department to set rates too. Later, it was also discovered that the townships had contracted with USDA to force connections **back in 1993** making their lies of "no mandatory connections" willful, as well as violating due process.

Petitioner tried to fight forced connections along with some others but there was no

hope. The hearings were best described by this court in the Miranda v. Arizona (384 U.S. 436 (1966) case by statements such as:
"...this court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition."
And
"...unfamiliar surroundings, the manuals instruct...display an air of confidence in the suspect's guilt and, from an outward appearance, to maintain only an interest in confirming certain details."
And
"It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity." Miranda, supra.

There are other apt descriptions of proceedings in their circuit court but the question is, if it isn't OK for the police to do this to citizens, how can it be OK when a judge does it? Nothing fair could come from it and it didn't. Summary judgments were granted despite what seemed to be good arguments. Now Petitioner has since learned about Michigan's Judicature Act where MCL 600.555 and 600.591 provide for local government's funding of the circuit courts office expenses and supplementing the judge's salary, AND providing for a **conflict of interest** when we

must appear in **their** court against them. This is not to mention the judges' retirement system and legislature's retirement systems that may be financed by some of the penalties. Still, the two conflicts of interest should disqualify the circuit court judge from hearing any cases where the local government is a party and that would include condemnation as here. Note further that both counties and townships share money so when a citizen can't or won't pay the township's demands, the county "pays" the township (one local pocket to another) then goes after the property.

The order was **unconscionable**, so petitioner brought a motion to set aside the judgment in one township (Mentor). Of course it was denied. Constitutional objections get labeled "frivolous" in their circuit court and costs get awarded (to the home team). It has lost every appeal in Michigan's court system (and at a heavy cost) so this petition is the final step.

While this was proceeding, both townships went ahead to force connections based on their circuit court's order. Then Big Creek Township discovered more properties that hadn't been connected. They sued more of us including your Petitioner. This case got a new number and a hearing date. Since the last strategy didn't work, Petitioner paid the jury fee "as provided by law" per Art. 1, sec. 14 of the Mich. Const. 63 (and guaranteed by Art IV, sec. 4 of the Federal Constitution) and prepared for the clash. It was to no avail. Circuit "court" said we aren't starting over, we're here to connect. He seemed to have made his own irrebuttable presumption.

The jury trial was denied. The clerk of the court's office won't refund the jury fee either but said I'd have to petition the judge for it; that they didn't have it; that it went to the state(?); and that maybe, if someone else ever requests a jury trial, they might give me that. This is another part of the game I can't understand. Again, it's an offer, acceptance, then failure (of them) to provide consideration (just like the sewer "service").

It gets "better." To expect a citizen who is attacked in court by any part of government to know what is happening is unreasonable. We were only taught certain things in the government's schools, so things like discovery being limited to a certain time period didn't help a bit since it was much later we learned what to ask for. A motion to enforce the state freedom of information act (FOIA) in the state's Supreme Court was denied. But, then, all motions in circuit court had been denied. Motions for cheaper alternatives and to eliminate permits and fees (if mandatory – why the permit?) were denied. Then someone discovered that the townships had ordinances on file requiring them to advertise for sealed bids for any contract over 20,000 dollars. The Big Creek Township had voted to force connections per their judge's order at another "special meeting." A third party saw the **notice on the door** of their **new township hall** that there would be this "special meeting" that evening and he told one other person besides me. (Now we know why "special meetings.") Only two of us showed up. The forced connections were disputed, then they voted

to do it over our objections. This apparently shows how "special meetings" work (and are "advertised"). After learning of the ordinance on sealed bids, we remembered that the estimate accepted by the lone bidder was 26,025. By his own admission, the township supervisor (who had investigated himself earlier) hadn't advertised for bids, but had called only 3 contractors, of whom only one would bid. The bidder, who had caused some of the pollution in the district with his dry-cleaning chemicals, had been fined for that and apparently is still paying for doing so. The bids were not advertised as per the ordinance either. This contractor's lone bid was accepted which was about double the going rate based on footage (per the Mentor township's supervisor). The bill was irrational so, after some complaints, the contractor came up with another bill. This wasn't rational either, what with some bills going way up even though the private septic tank wasn't smashed and measurements billed being questioned. So, finally, Big Creek Township Supervisor James Randy Booth agreed to go check them. By Being as generous as possible, he still couldn't come close to the footages billed. After checking a few of them, he stopped. My complaint in the courtroom about the fairness of the bills accomplished nothing except a comment from the township's attorney that we'd have to sue the township. So, I filed suit in the district court to have the contractor's fee removed from the property taxes since it violated their own ordinances and it was filed in district court because my

portion of the bill indicated jurisdiction there. They defaulted. The judge wouldn't sign the default but set up a hearing. The township's attorney finally answered claiming immunity for a governmental function, among other things. "Case law" says a sewer is a proprietary function so they don't have immunity. (They had a private attorney rather than a prosecutor.) The district court judge didn't need any arguments. He told me I had no standing and proceeded to award "costs" to the township's attorney of 649.28 dollars (a phenomenal rate per page – for his belated response). Now the same state judicature act has their district court financed by local government too by MCL 600.8104 (and maybe more). The hearing provided me with more evidence of how they treat citizens they don't like because, while waiting to go in for the "hearing," a deputy approached me in the hall, arrested me, and led me away in handcuffs for booking, finger printing, and all he thought was appropriate for my "crime." The charge was alleged trash at one of my properties since Doug Getty (of District Health fame) had written some sort of ticket or complaint – also pursuant to the P.A. 368 of 1978 called Public health code. Their district judge did a job on me that day ruling against me on three issues. Their P.A. 368 makes a splendid weapon to use on someone they don't like. Their prosecutor (also supported by local government – MCL 49.159) refused to deal or drop anything even though Mr. Getty has since relented. The prosecutor said she

owed no one anything(?), that I'd cost the county a lot of money, and that whether any trash was there now or not and any prior agreements Mr. Getty had reneged on didn't matter. She would prosecute. This also provides jail time – for health I suppose. It's all based on agency rules and a subjective opinion rather than any threat to health – or even who put stuff there. (It wasn't me.) This court and others are reluctant to admit that government officials sometimes act out of spite instead of "to secure these rights," but Petitioner notes it is becoming epidemic. An appeal to their circuit court is coming on the contractor's charges which won't be pleasant either. Note that if a constitution is well written it shouldn't matter who is in office because they wouldn't have enough power to hurt anyone. This same judge granted a default against me on an earlier issue. On still another issue, when my witness and I contradicted the officer's testimony on failure to signal, the same judge ruled in favor of the officer saying "he was just doing his job." Then, another district judge set up a "static conference" over a "burning permit" "crime" which turned out to be a surprise bench trial. Maybe I should have asked as to when we were to "statically confer." This court should identify the conflict of letting local officials have their own courts – if not by the results. I currently have multiple charges going and, no matter the outcome, I am being punished.

It may be that this court has already covered such games more than once.

Consider the words of Justice Kennedy from a 1994 case saying:

> "In matters of ethics, appearance and reality often converge as one. [cite given] ("Justice must satisfy the appearance of justice"); [cite given] ("justice should not only be done but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) noting the importance of "preserving both the appearance and reality of fairness," which "generates the feeling, so important to a popular government, that justice has been done..." Liteky v United States, 510 U.S. 540, 565 (1994)

The contracts between the townships and U.S.D.A. for grants and loans include "letters of understanding." The first from 1993 shows that mandatory connections were a condition apparently "enabling" a federal agency to do indirectly what they couldn't do directly. The changes in REU's (Residence Equivalent Unit) from the 1993 letter to the 1997 letter showed the total to go up by only 2 after 107 low income residences were to be forced to connect and one business omitted. A FOIA request to get an explanation drew only alleged confusion in response. So I tried a motion to enforce the FOIA in the Michigan Supreme Court, but it was denied. The implications here are that if the number of

connectors go up a lot but the total REU's don't, someone got a break, and Michigan's court of last resort doesn't care.

Michigan's Supreme Court makes rules (MCR = Michigan Court Rule) and they allege in MCR 1.105 that they are to "secure the just [resolution]...and avoid the consequences of error..." Then consider parts of MCR 2.116 "Summary Disposition" where we read: "2.116(C)(1) The court lacks jurisdiction over the person or property." And "2.116(D)(1) The grounds listed in subrule (c)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived." Ernesto Miranda wouldn't have known that and neither did I. Couple this with the idea that if you say anything or just show up in court, they claim jurisdiction and venue, then there is another catch. The judge won't drop anything sua sponte because of his conflict of interest and we the people don't know how to prove lack of jurisdiction – or even that it can be done at the time. For example, an in rem action to confiscate and destroy my property (private septic – and leave the mess) is the distinctive remedy of the admiralty and is administered exclusively by the United States courts per Art. III, sec. 2 of the Constitution which should have stopped this thing. But I didn't know that any more than other citizens would have. With such a judge who claimed "we're in equity" (but without a contract or injury) I doubt it would have helped. The court rule is unfair since jurisdiction should be

challengeable at any time. To be valid, a contract has to offer consideration (and be voluntary). The state's creatures here are demanding lots of consideration but offering none, save punishment if we don't specifically perform.

Petitioner can't refute any of the arguments in the Michigan Supreme Court because you can't argue with logic that isn't there. If it's supposed to be "quid pro quo," the fees were paid (at each of the appellate levels) but nothing was received. If stare decisis is supposed to help us know what the law is, how are the responses to my pleadings helping my understanding?

As for motive, consider this speculation: Go to www.courts.michigan.gov/SupremeCourt/resources/administrative/2003-59.pdf and read the discussion on rule changes that seem to put the final nail in the coffin of the Headlee (tax limitation) Amendment – being Mich. Const. 63, Art. IX, sections 25-34. It may be true what Young, J claims about the inconvenience to the court of appeals, but that court had no inconvenience deciding this case. It is also true what Weaver, J wrote explaining the problems of "particulars" being dumped on the citizen. This is not only unreasonable (fails due process), it usually isn't possible. The obvious and fair solution to these problems is to put the burden on the moving party where it belongs which will always be the state or an administrative arm of the state. They are supposed to be public servants and

should have to account to a principal when challenged. Otherwise, they aren't doing their fiduciary duty. Expediency isn't an answer and using rules to effectively destroy what was left of the tax limitation attempt isn't guaranteeing a republican form of government. What the Michigan Supreme Court upheld in Bolt v City of Lansing, 459 Mich 152, 587NW.2d 264 (1998), they took away with Duverney supra and these court rules. These court rules should be ruled unconstitutional.

The Bolt case supra stated that a fee must: (1) serve a regulatory purpose; (2) be proportionate to the necessary costs of the service; and (3) be voluntary. Per the information in this pleading, the "fees" don't pass these tests, making them (non-uniform) taxes in disguise. Since the Mich. Const. 63 in art IV, sec 32 requires any law that "imposes, continues, or revives a tax" to "distinctly state the tax" and, by Art IX, sec 3, taxes other than property taxes are to be uniform which these "fees" aren't. Corrigan, J. should have mentioned these in the Duverney case with her comments. Not only am I not benefiting by any of this but the "tap-in fees" for my property in Mentor are 47.6% above the identical "service" in Big Creek Township. (If not uniform, have we reached arbitrary and capricious yet?)

In this case, petitioner isn't presenting a lot of data here (particularities) partly because of high printing costs of what you're reading, more costs to obtain the data (they charge for it), The word and page limitations, the possibility that someone has already "cooked the books," and

problems with FOIA requests.

Even so, the monthly bills have increased considerably since the thing started. The portion for debt is up 17.65%; the administration portion is up 25%; but the Operations and Maintenance portion is up over 65% (O&M is where salaries go, only they are labeled "non-compensation" for board members). Then they've added a "reserve fund" (to cover damages they cause?) which would push O&M to a 77% increase if included there. Seems their rate of inflation is greater than the official one. Even so, the debt rate shouldn't change since the loan didn't. Whether the court rule changes had anything to do with this case is speculation, but here is another motive – from the appellate branch's own writings.

Page 483 of a Wayne County v Hathcock case reads:

> "...we have concluded that this court's Poletown opinion is inconsistent with our eminent domain jurisprudence and advances an invalid reading of our Constitution. Because that decision was in error and effectively rendered nugatory the constitutional..."

And

> "...But because Poletown itself was such a radical departure from fundamental constitutional principles...to the 1963 Constitution, we must overrule Poletown in order to vindicate our Constitution, protect the people's property rights, and preserve the legitimacy of the judicial branch..."

And further

> "...disregard for constitutional limits on the

exercise of the power of eminent domain and the license that opinion appeared to grant to state and local authorities." Wayne County v Hathcock, 471 Mich 445, 483-484 (2004).

It should be noted here that a portion of the dissent on pg. 487 of the Hathcock case warns "against the tendency to force from the constitution, by 'interested sublety and ingenious refinement,' meaning that was never intended by the people who adopted it." Wayne County, supra. This is an excellent description of the treatment given the Duverney case supra and others by misapplying the Headlee Amendment(s) with American Axle v Hamtramck, 461 Mich 352 (2000) making the (state) constitution a barrier of words easily destroyed with other words.

Another court explained their motive as: "Poletown arose out of the economic crisis which faced Detroit and its most significant economic buttress, the automobile industry, in the 1970's and early 1980's. In 1981, unemployment in the City of Detroit reached eighteen percent." Centerline v Chmelko, 164 Mich App 251 (1987).

From this we might conclude that compelling need can trump constitutional rights at times. And that government's socialist activities don't necessarily work since the unemployment rate in the Detroit area is rumored to be even higher now. But, it also provides motive for the responses to appeals in this instant case leading to a question: if the economy somehow gets bad (ignoring cause) who has to suffer – government or the public? In your Panama Refining Co. case it was stated that:

"Emergencies create no power....when expediency seeks to triumph over righteousness and correct principles, then is when we need the safeguards of our Constitution." Panama Refining Co., v Ryan, 293 U.S. 388, 394 (1934).

The Michigan's Lockwood case expresses similar sentiment with: "We come face to face, then, with what has been termed "the most pressing rule for constitutional construction," namely that "the provisions for the protection of life, liberty, and property are to be largely and liberally construed in favor of the citizen." Lockwood v Commissioner of Revenue, 357 Mich 517, 557 (1959). This case goes on to give the reasons for the rule as that: "...it is a constitution that we are construing, our basic charter of government. Here the people have erected their safeguards, not only against tyranny and brutality but against the oppression of temporary majorities and the rapacious demands of government itself..." Lockwood supra, pg. 557.

Thus it seems the court systems know of government tendencies – and the Michigan Court System is a part of government. Since the State of Michigan is now having financial difficulties, apparently its appellate system has done its share to help that problem here, but not to secure rights or liberties. Page 451 of the Vlandis case mentions that "...the Constitution recognizes higher values than speed and efficiency." Then it goes on to condemn the state's "conclusive presumption...under the Due Process Clause where there are other reasonable and practicable means of

establishing the pertinent facts on which the State's objective is premised." Vlandis v Kline, 412 U.S. 441, 451 (1972). There **are** other ways of determining whether there is a problem with a private septic such as proving it with the warrant requirements of stating with particularity the probable cause. There are lots of inspectors, also known as citizens, residents, renters, etc.

The Cleveland Brd of Education v LaFleur case states: "Thus, the conclusive presumption embodied in these rules, like that in Vlandis, is neither "necessarily [nor] universally true," and is violative of the Due Process Clause." Cleveland Board of Education v LaFleur, 414 U.S. 632, 646 (1973). This case points out that permanent irrebuttable presumptions violate both the Fifth and the Fourteenth Amendments; notes the absence of any individualized determination (on pg. 644); notes that "the Due Process Clause" required a more individualized determination (pg. 645); and considers the (lack of) wisdom on several pages. Cleveland supra.

In this instant case, there have been some individualized treatments but it is due to lack of equal protection rather than any real problem. Section 12752 of P.A. 368 of 1978 (MCL 333.12752) is obviously an irrebuttable conclusive presumption being run on the general public. Section 12751 of the same act contains another irrebuttable presumption in that we must conclude that private septics are bad (condemned in rem) when their

sewer comes within 200 feet of a "structure." This is convenient (for them), expedient, very self-serving and profitable but it doesn't comport with due process. It also shows they don't believe their own claim by not inflicting the alternative on all beyond 200 feet.

The Dolan case discusses an "essential nexus" between the "legitimate state interest" and the permit conditions on pg. 386. The permit conditions offered petitioner was – you must pay up. The Dolan case continues with: "The absence of a nexus...converted a valid regulation of land into an out-and-out plan of extortion." Dolan v City of Tigard, 512 U.S. 374, 387 (1994). This case goes on to state "No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." Dolan, supra at pg. 391.

Efforts to prove lack of need in circuit court was rebuffed with comments claiming it was a political problem. "If you don't like it, vote them out." With a small targeted group split by two townships, that's not a solution – nor is it due process. A complaint about costs was met with the comment: "Well sell some of your houses then." A protest as to time drew the response that there was more than one bulldozer or backhoe in the county. Proofs of no need shouldn't have been necessary, but they were included with pleadings to Michigan's Supreme Court. These were ignored.

Since Due Process requirements cover other amendments, it is interesting to note that the Sitz case found the Michigan Constitution to afford "greater rights than those found in the federal constitution." Sitz v State Police, 193 Mich App 690, 698 (1992). The effectiveness of that imposition (of stops) was condemned on pg. 698 as being only 1 in 126.

Petitioner hopes the Federal Constitution will afford greater rights than Michigan's court system has by finding the offending statutes, ordinances and court rules unconstitutional.

IS THIS IMPROPER DELEGATION OF AUTHORITY?

The separation of powers is an established fact of our republican form of government being discussed at length in the Federalist Papers including no's 47 and 51 by Madison and no's 9 and 78 by Hamilton as well as others. The separation of powers in Michigan is confirmed by Mich. Const. 63, Art. III Sec. 2 as: "The powers of government are divided into three branches, legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." This was in effect prior to 1963 since the Dail case stated: "if there is any ambiguity, the doubt should be resolved in favor of the traditional separation of governmental powers." Dearborn v Dail, 334 Mich 673, 55 NW.2d 201, 208 (1952) The Dail case ends with removing the justices of the peace from the township boards since they were tainted with the judicial branch and repugnant to the constitution. It continues by stating that "the only legal members of the township board of Dearborn Township are the supervisor, the township clerk, the township treasurer." Dearborn v Dail, supra, pg. 210. This raises some issues since the 3 legal members are all administrative which is executive. MCL 213.21 defines "state agencies" as "all unincorporated boards, commissions and agencies of the state given by law the management and control of public business

and property, and the office of governor or a division thereof."

The Sailors case helps illustrate this by stating: "Political subdivisions of States – counties, cities, or whatever – never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." Sailors v Board of Education, 387 U.S. 105, 107-108 (1966). Since they aren't sovereign, they can't have all the three branches of powers. The "assist in carrying out...functions" is **executive**. The case goes on to state that the "number, nature and duration of the powers conferred upon [them]... and the territory over which they shall be exercised rests in the absolute discretion of the state." Sailors, supra. Agencies are part of the executive.

Article IV, sec. 1 of the Michigan Constitution 1963 **vests the legislative power in a senate and house of representatives** like article 1 section 1 of the Federal Constitution grants legislative powers to Congress. Art IV of the Michigan Const. section 8 prohibits members of the legislature from holding other positions including those on a local board. For the local township or county boards to legislate as was done here violates several portions of the Michigan Constitution including Art IV, sections 7, 22, 23, 24, 26, 29, 30, and 33 among others which is enforceable by Art. IV, sec. 4 of the Federal Constitution.

The only legislative powers a local unit can have would be in adopting a charter, thus making it "organized." "The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own actions depend." Taylor v Gate Pharmaceuticals, 468 Mich 1, 658 NW.2d 127 (2003); Locke's Appeal, 72 Pa 491, 498-499 (1873). Pages 7 and 8 of the Taylor case give a fair description of the nondelegation doctrine. The footnote no. 9 on pg. 10 of the Taylor case claims that the existence of "sufficient standards" or "principles" to be acceptable. The standards in the legislature's Public Health Code (P.A. 368) are lacking. MCL 333.12753 declares: "Structures in which sanitary sewage originates lying within the limits of a city, village or township shall be connected to an available public sanitary sewer in the...township **if required by** the ...or township." Thus, this is one of those broad sweeping grants of "authority" where anything goes. In another case, this court noted: "There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution." Board of Education v Barnette, 319 U.S. 624, 638 (1942). The same page continues by noting that the Bill of Rights was to withdraw certain subjects from controversy and the acts of officials. It also said: "One's right to life, **liberty**, and **property**,...and **other fundamental rights** may not be submitted to a vote; they

depend on the outcome of no elections." Brd of Education v Barnette, supra. It continues on the next page, 639, to speak of principles producing a philosophy that the individual was the center of society and "his liberty was attainable through mere absence of governmental restraints." It contains the idea that a government governs best when it governs least which is certainly what both the framers of the federal constitution intended and those who approved Michigan's Constitution.

Michigan's Public Health Code, MCL 333 12754 "authorizes" local officials to compel specific performance without a contract (apparently inflicting a unilateral contract) and MCL 333.12756 implies that local officials may impose a "tap-in fee" and define "hardship." Remember that setting rates is legislating but note too that allowing locals to "define hardship" is both legislating and an admission that this thing would cause hardship.

Then MCL 333.12757 seems to put a "fig leaf" on this obscenity by delegating legislative powers to the local health department to regulate an "innovative and alternative" system, inspect same (apparently bypassing warrant requirements), set fees (legislate), and authorize local officials to charge sewer "availability fees" (more legislating – for services not rendered). The local officials had no problem implying the delegation to charge tap-in fees but denied the "compost toilet" specifically mentioned in MCL 333.12751(b).

Whether anyone has a compost toilet in the sewer district is unknown. The sections known as MCL 333.12751 through 333.12758 are unconstitutional and should be declared so.

The Public Health Code (P.A. 368 of 1978) improperly delegates legislative powers to the local health department (LHD) and its "governing entity" – the District Health Board (county commissioners). MCL 333.2441 allows the LHD to adopt rules and regulations to be approved by its governing entity, said regulations to be "at least as stringent as the standard established by state law applicable to the same or similar subject matter." This apparently allows local officials to exceed state laws resulting in no representation but it goes on to provide criminal punishments of fines and incarceration if charged with one of these agency's "regulations." This makes a fine weapon and money-maker for them but it violates the constitutions.

At this point, it might help to point out that the legislature and judges in Michigan have a money-maker going here for them too with their enviable retirement systems financed by court activities. The MCL numbers are 600.2529, 600.8381, 600.181, 600.8420, 600.8371, and 600.5756 which should go some ways toward explaining the treatment mentioned in the Due Process section of this pleading (the questions overlap). This court has looked on other similar games with disfavor such as in Tumey v Ohio, 273 U.S. 510 (1927). So why shouldn't the legislature be for the defining of as many criminal/civil

infractions as possible so they and the judges can each take their cut?! Convictions are thus more likely. These games probably aren't meant to be public knowledge either. I can think of no "intelligent principles" to support the foregoing. This court has said: "Statutory language of such a standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections. Legislatures may not so abdicate their responsibilities for setting the standards of the criminal law." Smith v Goguen, 415 U.S. 566, 575 (1973). Your Petitioner is hoping that this is repeated soon.

As for justifying this sewer game, Michigan's Attorney General tried in an opinion building on District of Columbia v. Brooke, 214 U.S. 138 and Hutchinson v Valdosta, 227 U.S. 303. The Brooke case quotes a previous decision as: "...must be considered in the light of the conclusion, so often announced by this court, that the United States possess complete jurisdiction, both of a political and municipal nature, over the District of Columbia." D. of Columbia v Brooke, supra at pg. 142. It is neither fair nor on point to take "case law" from a location without rights secured by a constitution (and maybe not even unalienable rights either) and without representation and apply it to a living, breathing citizen of a state. But, neither is it proper to take rules intended for an artificial entity and apply them to such a citizen - yet it is done. Michigan's Attorney General Opinion goes on to talk of "experimental legislation" (I'm not making this up) to "justify" the 200 foot

cutoff and continues to pronounce statutes making it unlawful to discharge "any raw sewage of human origin, directly or indirectly into any of the waters of the state..." Note that a privately-owned septic system doesn't discharge raw sewage nor does it discharge anything into state waters because the state doesn't own the groundwater. See Schenk v City of Ann Arbor, 196 Mich 75, 83, 163 NW 109 (1917) which states that the owner of the land owns the percolating water which is part of the soil. The owner may use said water so long as it doesn't harm anyone else. The natural resources of Michigan are state-owned properties which a careful reading of Mich. Const. 63, Art. IX, sec. 35 will show. The state's "protection" game may be profitable for them but it's unconstitutional.

Some of the results of their unconstitutional acts are these: The sewer lines were put in under the streets without a vote or need and without just compensation to property owners who supposedly own to the middle of the road. The Michigan Supreme Court gave local officials the use of the land under road right of way in Eyde Brothers Dev. Co. v Eaton Co. Drain Com'r. 427 Mich 271, 398 NW.2d 297 (1986). (So the Supreme Court can now second guess the intent of the grantors - unlikely since the road only goes down a foot or so.)

The townships condemned some, but not all private septics, had a contractor smash them, and left the debris on the private property in an in rem action. The townships also received

easements to run their pipes across private property (trespass) to connect unwilling customers like Petitioner to their sewer system from their court system. This way they can confiscate sewage to sell later as fertilizer and charge for taking the easements instead of providing any compensation.

The townships allowed some citizens to pay the tap-in fee but not connect so they still use their (threatening) private septics and their monthly bills are zero. This isn't supposed to be public knowledge and an FOIA request to find out their number will cost money.

The increases in tap-in fees each year might be unjust enrichment for services not rendered, or it might be punishment for trying to assert a right, or maybe both. Petitioner believes that the contractor's overcharges are spite or punishment. There are multiple monthly flat rates but the total of their number can't be shown here, again due to FOIA problems. If you call 989-652-4053 and ask for Joe, he can tell you he was forced to pay the connection fee for a cabin with no water, no septic, no sewage, and **nothing to connect.** It was cheaper than going to their court.

If you call 989-826-5925 and ask for Sandy, she might tell you how their sewer backed up and flooded part of her house so that their "customers" can live in fear of it. But, she might not if there is a "gag order" on the event. Then you might call 734-641-7947 and ask for Robert who can tell you how his family pooled resources to rent dumpsters and destroy their house to get out of the extortion.

Some houses have changed hands and more are for sale. I know of a couple that sold due to the sewer and included a letter proving one of these with the appeal to the Mich. Supreme Court. You may assume the additional fees are responsible for more houses changing hands in addition to the bad economy. This violates the intent of 42 USC 1441 et seq. Several "customers" have had problems with lines freezing in the winter that they didn't have before and at least one of those forceably connected will have problems in the future if use is ever attempted because some of the pipes are above ground. (But the snow covered them for the winter.) Note too that their sewer is really just a larger private (proprietary) septic, more apt to overflow in larger quantities and is closer to the river it is alleged to protect. The county will go after the people's homes later when they can't pay - another in rem action. It should be noted here that the waters being "protected" here aren't navigable and that the federal constitution grants jurisdiction to all admiralty/in rem cases to the federal courts in Art 3, sec 2 to promote uniformity. So how could this be properly delegated?

In another relevant case, a footnote talks about a "test for required compensation being whether a legislature has recited a harm-preventing justification for its action." It continues by pointing out that "Since such a justification can be formulated in practically every case, this amounts to a test of whether the legislature has a stupid staff. We think the

Takings Clause requires courts to do more than insist on artful harm-preventing characterizations." Lucas v South Carolina Coastal Council, 505 U.S. 1003, 1026 n.12 (1992). But in this instant case, local officials got some help – not just from the legislature's wording but from the staff of another contractor who may have advised the fraud and whose company left out the anti-backflow valves to maybe get another lucrative contract later. (Sandy doesn't know this.)

The Lucas case continues with a maxim "sic utere tuo ut alienum non laedas" which describes the use of private septics in the sewer district. The lucas case also states that a "State, by ipse dixit, may not transform private property into public property without compensation..." Lucas, supra at pg. 1031. The state didn't bother to require proof of nuisance and they admit private septics aren't nuisances per se since they only become a "threat" when a government sewer comes within 200 feet of them.

But there's another Mich. Attorney General opinion (#6232) that tells the truth about delegation as follows; "In Fennel v Common Council of Bay City, 36 Mich 186, 190 (1877), the court stated: "The term <u>law</u>, as defined by the elementary writers, emanates from the sovereignty and not from its creatures." And

"The legislative power of the state is vested in the state legislature, and their enactments are the only instruments that can in any proper

sense be called laws." Delta County v City of Gladstone, 305 Mich 50; 8 NW. 2d 908 (1943)."

But you already know that. I believe that the foregoing is meritorious but it needs an order from this court to make it effective. Would you kindly grant certiorari?

CONCLUSIONS

Some of Michigan's statutes are unconstitutional by violating due process and improperly delegating authority.

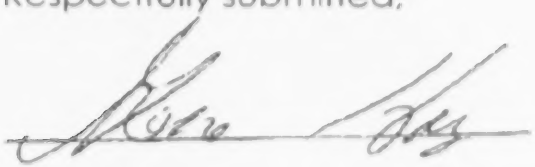
Some of Michigan's court rules are unconstitutional since they violate due process requirements.

The Big Creek and Mentor Townships' ordinances violate constitutional requirements of due process and constitute an improper delegation of authority, then call the results a "privilege."

Petitioner and others have been harmed by these acts. This is ongoing.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



April 26, 2009